

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**CASE NO. A-6602**

**PETITION OF MELISSA GAGNIER-SOLIS AND LUIS SOLIS**

**OPINION OF THE BOARD**

(Opinion Adopted February 13, 2019)  
(Effective Date of Opinion: February 27, 2019)

Case No. A-6602 is an application for two variances needed for the construction of an addition to an existing home. The first is a variance of 3.60 feet to permit construction within 26.40 feet of the front lot line along Dana Court. The required setback is thirty (30) feet, in accordance with Section 59-4.4.8.B.2 of the Zoning Ordinance. The second is a variance of 0.30 feet to permit construction within 24.70 feet of the rear lot line. The required setback is twenty-five (25) feet, in accordance with Section 59-4.4.8.B.2.

The Board of Appeals held a hearing on the application on February 13, 2019, after the previously-scheduled January 30, 2019, hearing date was cancelled for weather. Petitioner Luis Solis was present at the hearing in support of the requested variances, along with Marcus Johnston and Joy Richman of Brothers Services Company.

Decision of the Board:                      Variances **GRANTED**.

**EVIDENCE PRESENTED**

1.     The subject property is Lot 27, Block C, Byeforde Subdivision, located at 4104 Dana Court, Kensington, MD, 20895, in the R-90 Zone. The property is 13,739 square feet in area, and contains an existing house, built in 1957. See Exhibit 3(b). The property is a five-sided through lot, with frontage on Connecticut Avenue and on Dana Court, vehicular access being solely from the latter. See Exhibit 4.

2.     The Petitioners' Justification Statement ("Statement") cites the "shape & narrowness of the lot & the location of the primary structure" as unique features of the

subject property, noting that “[t]he existing house is located in a cul-de-sac, & has minimal frontage, as the lot area is an unusual shape, narrow & shallow.” See Exhibit 3(b).

3. The Statement notes that the location of the existing house on the subject property was established prior to purchase of the property by the Petitioners. In discussing the proposed addition, the Statement states that “[w]ithout the variance, it would be very difficult for the petitioner to relocate this addition, & could bring on future hardships.” See Exhibit 3(b). In addition, the Statement notes, with respect to the effect of the requested variances on neighboring properties, that:

d. – The proposed addition is a minor encroachment into the setbacks & will not negatively affect the existing area of the lot. The proposed addition will not have a negative effect on the surrounding properties or the rest of the lot area, as well as the integrity of the overall master plan.

e. – With this addition, it will not negatively affect the abutting or confronting properties, (as per signed documents from the neighbors attached supporting the variance).

4. The record contains letters from the owners of 4100 Dana Court, whose property abuts the subject property to the east, and from the owner of 4108 Dana Court, whose property abuts the subject property to the west, indicating that they have no objections to the proposed construction. See Exhibits 7(a) - (b).

5. The site plan submitted with the application shows that the existing home encroaches on the required thirty (30) foot front setback. See Exhibit 4.

6. At the hearing, Marcus Johnston of Brothers Services Company testified that the subject property is a very unusual, narrow lot, and that options for expanding this existing home to meet the needs of the Petitioners are limited. He testified that a small portion of the right rear corner of the proposed construction will encroach approximately four (4) inches on the rear setback, and that the front lot line encroachment of approximately 42 inches will be cantilevered over and will not increase the existing foundation in that area. Mr. Johnston testified that his company has designed the addition as best as they can to fit this lot. He testified that the neighbors have been consulted and support the proposed construction, noting that the proposed construction would not impact anyone on Dana Court other than to improve their property values.

## **CONCLUSIONS OF LAW**

Based on the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E, as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

*Section 59-7.3.2.E.2.a.ii. – the proposed development uses an existing legal nonconforming property or structure;*

The Board finds, based on Exhibit 4, that the Petitioners' house, which was constructed in 1957 and which encroaches on the required front lot line setback, is a nonconforming structure. Thus the Board finds that because the proposed development uses this existing nonconforming structure, the application satisfies Section 59-7.3.2.E.2.a.ii of the Zoning Ordinance.

*2. Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the Petitioners are not responsible for the nonconforming location of the existing house, which was established prior to their purchase of this property.

*3. Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the proposed construction is designed to use and fit with the existing nonconforming house while minimizing any additional encroachment into the required setbacks. In support of this, the Board notes that the Petitioners are not expanding the footprint of the existing house to the front, but rather are cantilevering their proposed addition over the existing foundation, and that the four-inch encroachment of the rear corner is a result of the property's unusual five-sided, non-rectilinear shape and the original placement of this nonconforming home on the property. See Exhibit 4. Accordingly, the Board finds that the requested variances are the minimum needed to allow the proposed expansion of this nonconforming home, and thus to overcome the practical difficulties that full compliance with the Zoning Ordinance would cause.

*4. Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that allowing the Petitioner to proceed with the proposed construction is consistent with the residential uses contemplated by the Kensington-Wheaton Communities Master Plan.

*5. Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*


The Board finds that the proposed addition will not be adverse to the use and enjoyment of abutting or confronting properties. In support of the finding, the Board cites the Statement for its assertions that the proposed encroachments are minor and will not negatively affect neighboring properties. See Exhibit 3(b). In addition, the Board cites the letters from the owners of the abutting along Dana Court indicating that they have no objection to the proposed construction. See Exhibits 7(a)-(b).

Accordingly, the requested variances of 3.60 feet from the front lot line and 0.30 feet from the rear lot line are **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. Construction shall be in accordance with Exhibits 4 and 5 (inclusive).

Therefore, based upon the foregoing, on a motion by Katherine Freeman, seconded by Bruce Goldensohn, with John H. Pentecost, Chair, and Stanley B. Boyd, Vice Chair, in agreement, the Board adopted the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.

  
John H. Pentecost, Chair  
Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 27th day of February, 2019.

  
Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.